

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION III

In the Matter of:

E. I. DuPont de Nemours and Company
1007 Market Street
Wilmington, Delaware 19898,

NOTICE OF DETERMINATION

Respondent.

Diversified Converters, Inc.
13711 Jefferson Davis Hwy
Chester, Virginia 23831,

Docket No. CAA-03-2009-6016

Facility.

NOTICE OF DETERMINATION

Pursuant to the Final Policy Statement, Incentives for Self-Policing: Discovery, Disclosure, Correction and Prevention of Violations, 65 Fed. Reg. 19618 (April 11, 2000) (Self-Disclosure Policy), the U.S. Environmental Protection Agency, Region III (EPA) hereby issues this Notice of Determination (NOD) regarding a violation by DuPont de Nemours and Company (DuPont) of Sections 113 and 601 *et seq.* of the Clean Air Act (CAA), 42 U.S.C. §§ 7413 and 7671 *et seq.*, at its contractor-operated facility, Diversified Converters, Inc., located in Chester, Virginia (Diversified or the Facility). The violation which is the subject of this NOD was voluntarily disclosed to EPA by DuPont in letters dated May 14, 2008 and September 2, 2008.

I. SELF-DISCLOSURE POLICY

In order to encourage regulated entities to conduct voluntary compliance evaluations and to voluntarily discover, disclose and correct violations of environmental requirements, EPA promulgated the Self-Disclosure Policy. As an incentive for regulated entities to participate in the Self-Disclosure Policy's voluntary disclosure process, EPA may eliminate or substantially reduce the gravity-based component of civil penalties to be assessed for violations which are voluntarily disclosed in compliance with the conditions specified in the Self-Disclosure Policy. The conditions of the Self-Disclosure Policy are as follows: (1) discovery of the violation(s) through an environmental audit or compliance management system; (2) voluntary discovery; (3) prompt disclosure; (4) discovery and disclosure independent of government or third-party plaintiff; (5) correction and remediation; (6) prevent recurrence; (7) no repeat violations; (8) other violations excluded; and (9) cooperation.

Pursuant to the Self-Disclosure Policy, EPA may reduce gravity-based penalties up to 100 percent, if the disclosing entity satisfies all of the conditions described above. EPA may reduce gravity-based penalties up to 75 percent, if the disclosing entity satisfies conditions (2) - (9), above. However, EPA reserves the right to assess a civil penalty with regard to any economic benefit that may have been realized as a result of such violations, even in those instances when the disclosing entity has met all the conditions of the Self-Disclosure Policy. In its enforcement discretion, EPA may waive a civil penalty with regard to the economic benefit arising from such violations if EPA determines that such economic benefit is insignificant. Penalty reductions are not available under the Self-Disclosure Policy for violations that result in serious actual harm or may present an imminent and substantial endangerment to public health or the environment, nor are such reductions available for violations of any order or consent agreement.

II. FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. In letters to EPA, dated May 14, 2008 and September 2, 2008, DuPont disclosed the violation listed below.

Violation: DuPont violated Subchapter VI, Stratospheric Ozone Protection, of the CAA, 42 U.S.C. § 7671 *et seq.*, at its facility located at Chester, VA, by failing to notify the Regional Administrator of EPA that additional time was necessary to repair a leak of refrigerant, R-22, which occurred at the Diversified Converters Facility, as required by 40 C.F.R. §§ 82.156(i)(2) and 82.166(n)(1).

2. Based on the information provided by DuPont, EPA has determined that DuPont has met each of the following conditions set forth in the Self-Disclosure Policy, as explained below.

(a) DuPont has stated that the violation was discovered as part of its periodic voluntary environmental audit program.

(b) DuPont has stated that the violation was identified voluntarily, not through a monitoring, sampling or auditing procedure required by statute, regulation, permit, judicial order, administrative order, consent decree or consent agreement.

(c) DuPont promptly disclosed the violation to EPA in writing within twenty-one (21) days of its discovery.

(d) DuPont has stated that the violation was identified and disclosed prior to the commencement of a federal, state, or local agency inspection, investigation, or information request, notice of a citizen suit, legal complaint by a third party, report by a "whistleblower" employee or imminent discovery by a regulatory agency.

(e) DuPont has described the steps the Facility has taken to correct the violation.

(f) DuPont has described the steps the Facility has taken to prevent recurrence of the violation.

(g) DuPont has stated that the potential violation is not a repeat violation from any prior self-disclosure or enforcement action within the past three years.

(h) DuPont has stated that the potential violation did not (1) result in serious actual harm, or present an imminent and substantial endangerment to human health or the environment, or (2) violate the specific terms of any judicial or administrative order or consent agreement.

(i) DuPont has cooperated with EPA and provided the information necessary for the Agency to determine the applicability of the Self-Disclosure Policy to its disclosure.

III. DETERMINATION

Pursuant to the Self-Disclosure Policy, and based on information provided by DuPont, EPA makes the following determination concerning the violation identified above:

1. DuPont's failure to comply with the above listed regulations has resulted in a violation of Section 601 *et seq.* of the CAA, 42 U.S.C. § 7671 *et seq.*, at its Facility located in Chester, Virginia.
2. The authority to seek civil penalties for the violations recited herein are found at Section 113(d) of the CAA.
3. Pursuant to the Debt Collection Improvement Act of 1996, (DCIA) and the subsequent Civil Monetary Penalty Inflation Adjustment Rule, 40 C.F.R. Part 19 (Penalty Inflation Rule), violations of Section 601 *et seq.* of the CAA, 42 U.S.C. § 7671 *et seq.*, which occurred on March 15, 2004 and thereafter are subject to a statutory maximum penalty of \$32,500 for each day during which a violation occurs.
4. EPA has calculated the gravity-based penalty for the disclosed violation based upon the *Clean Air Act Stationary Source Civil Penalty Policy*, October 25, 1991, and *Appendix X CAA Policy for Violations of 40 C.F.R. Subpart F, Part 82*, June 1, 1994, and in light of the information available to EPA at this time, the total gravity-based civil penalty for the disclosed violation described herein would be One Thousand Six Hundred and Forty Four Dollars (\$1,644.00).
5. Based upon the information provided by DuPont and EPA's consideration of the aforementioned policy, DuPont has met all of the conditions of the Self-Disclosure Policy and qualifies for a 100 percent reduction in the gravity-based component of the civil penalty for the disclosed violation. No significant economic benefit of non-compliance has accrued to DuPont concerning the violation described herein. Therefore, EPA will not assess a gravity-based civil penalty against DuPont concerning the aforementioned

violation, nor will the Agency assess a penalty concerning any economic benefit of noncompliance.

IV. RESERVATION OF RIGHTS

1. This NOD resolves only the potential claims for civil penalties pursuant to Sections 113 and 601 *et seq.* of the CAA, 42 U.S.C. §§ 7413 and 7671 *et seq.*, for the violation alleged herein and as specifically described in correspondence from DuPont dated May 14, 2008 and September 2, 2008. Nothing in this NOD is intended, nor shall be construed, to operate in any way to resolve criminal liability, if any, of DuPont. EPA reserves the right to require compliance, corrective action, and/or other remedial measures in connection with any violations, including the violation alleged herein, of all federal environmental law.
2. This NOD shall not relieve DuPont of its obligation to comply with all applicable provisions of federal, state, and local law, nor shall it be construed to be a ruling on, or determination of, any issues relating to any federal, state, or local permit. Nor does this NOD constitute a waiver, suspension, or modification of the requirements of environmental law, or any regulations promulgated thereunder.
3. EPA reserves the right to undertake any action against any person, including DuPont, in response to any condition which EPA determines may present an imminent and substantial endangerment to the public health, welfare or the environment.
4. EPA reserves the right to revoke this NOD and thereby render such NOD null and void if and to the extent that any information or certification DuPont provided, upon which any civil penalty mitigation granted herein for such violation was based was materially false or inaccurate at the time such information or certification was provided to EPA. In such event, EPA reserves the right to assess and collect any civil penalties for any violation described herein. Such revocation shall be in writing and shall become effective upon receipt by DuPont.

In issuing this NOD, EPA seeks to promote self-auditing by DuPont and expects DuPont to be in full compliance with regulatory requirements and to continue the internal procedures necessary to prevent recurrences of violations of environmental requirements.

**Under the Authority of the
U.S. Environmental Protection Agency, Region III**

Date: 3/18/09

By: 

Bernard E. Turlinski, Associate Director
Office of Enforcement and Permits Review
Air Protection Division